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No. 73-418

In the Supreme Court of the United States

OCTOBER TERM 1973

IN RE:

HARRY PORCYNALEK HUTUL
AN ATTORNEY
Petitioner,

In the Board of Managers of Chicago Bar Association, Association of Commissioners in the Supreme Court of Illinois.

PETITION FOR APPEAL AND FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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PETITION FOR APPEAL AND FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner, HARRY PORCYNALEK HUTUL, respectfully prays that an Appeal be granted and Petition for Writ of Certiorari issue to review the judgment order and opinion of the Supreme Court of Illinois entered in this proceeding on March 20, 1972.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois is attached at Appendix I, App. P. 1. The Opinion is Not reported.

JURISDICTION

The Judgment of the Supreme Court of Illinois disbarring Petitioner was entered on March 20, 1973.

A timely Petition for Rehearing was denied on June 1, 1973. On August 21, 1973, ten days before expiration of the time for filing the Petition for Writ of Certiorari, Petitioner applied to the Supreme Court of the United States for an extension of time within which to file the instant Petition. On August 27, 1973, Justice William Rehnquist entered an Order denying this extension. This Court's jurisdiction is envoked under 28 U.S.C., Section 1257(3).

QUESTIONS PRESENTED

Whether the refusal and failure of the Supreme Court of Illinois to accord Respondent-Petitioner in a State disbarment proceedings and the effect and conclusion of innocence of Criminal intent and conduct legally concluded from a jury finding of acquittal in a State Criminal Court proceedings and relying solely upon Criminal intent and conduct in a Federal Criminal Court conviction is a denial by the State of the 5th Amendment and U.S. 14th Amendment rights.

STATUTORY PROVISIONS INVOLVED

Rules of the Supreme Court of Illinois; Illinois Revised Statutes, 110, (A), Section 751 (Supreme Court 751) Proceeding to Strike Attorney's name from the Roll.

Supreme Court Rule 751 appeared as Appendix II, App. P. 9.

STATEMENT OF THE CASE

The Petitioner, HARRY PORCYNALEK HUTUL was admitted to the practice of Law in Illinois in May of 1954.

In the instant proceedings being appealed from, he is charged with having been engaged in Criminal misconduct by virtue of a conviction in the United States Federal District Court, 64CR408 in 1966.

The alleged criminal episodes involved automobile accident cases in a period from March 29 to July 5, 1959. The convictions were for mail fraud, conspiracy to commit mail fraud, pursuant to the applicable sections titled 18 U.S. Code, Sections 1341 and 341 respectively.

Disciplinary proceedings against petitioner began in 1969 by Service of a Complaint of Commissioners of the Chicago Bar Association, by Supreme Court Rule 751. Said Complaint alleged conduct bringing the legal profession into disrepute.

A series of hearings were held at which Respondent-Petitioner herein was present.

The evidence offered against said Respondent-Petitioner was certified copies of the Judgment Order of Conviction and certified copies of the Decision of the 7th Circuit Court of Appeals in 64CR408.

Thereafter, Petitioner in the execution of sentence imposed in the above and foregoing Criminal Court Proceedings was incarcerated in the Federal Correctional Institution at Sandstone, Minn.

While there, the recommendations for Disbarment and proceedings in Cause 43292 in the Supreme Court of Illi-

nois, entitled: in the Matter of Harry Porcynalek Hutul, Attorney, on information 1420 was entered. Petitioner-Respondent informally, by letter requested a continuation of this proceedings so that he could properly defend them upon his release. This request was granted.

Upon such release and Parole to the U.S. Board of Paroles, Petitioner filed his Brief, a certified copy of the Transcript in Cause 61-2942 in the Criminal Court of Cook County, wherein he was charged with obtaining monies under false pretenses, conspiracy to defraud, and operation of a confidence game. Included in the Certified Copy of the Common law Record was a list of witnesses and supplemental list of witnesses which included and accommodated each and every of the criminal episodes in the Federal Court Criminal proceeding aforesaid. The Judgment of Acquittal based on the jury findings in 1962 on those matters was likewise a part of Common Law Record.

Petitioner by the evidence and the pleadings raised the issue of double jeopardy, res-adjudicata, and collateral estoppel. By virtue of the diametrically opposed findings of the two juries. Petitioner raised the same issues in mitigation in the Disciplinary Proceedings herein.

After oral argument, the Supreme Court of Illinois entered an Order as aforesaid on March 20, 1973 and denied the Petition for rehearing on June 1, 1973.

Copies of Decision Below is Appendix I, App. P. 1, and Petition for Rehearing is Appendix III, App. P. 13.

HOW FEDERAL QUESTION IS PRESENTED

During all of the proceedings before the Commissioners Committee on Grievances, et al., Petitioner-Respondent raised the question of double jeopardy protection guaranteed by the 5th and 14th Amendments of the United States and Ilinois Constitution. Petitioner also raised the questions of Res-adjudicata and Collateral estoppel, citing *Ashe* v. *Swenson,* 90 S.C. 1189 and *Waller* v. *Florida,* 90 S.C. 1184, both cases further cited at 397 U.S.

The Illinois Supreme Court in its decision as set out in Appendix I herein on the recommendation of the Chicago Bar Association relying on and quoting the decision of the 7th Circuit Court of Appeals, 64CR408, where these contentions are raised as well.

REASONS FOR GRANTING THE WRIT

The refusal and failure of the Supreme Court of Illinois to accord Respondent-Petitioner in a State Disbarment Proceedings, the effect and conclusion of Innocence of criminal conduct and intent legally concluded from a jury finding of acquittal in a State Criminal Court Proceedings and relying solely on Criminal Intent and conduct in a federal Criminal Court conviction is a denial by the State of the 5th Amendment and U.S. 14th Amendment rights.

The Illinois Supreme Court in refusing to give effect to Petitioner's claims of right under the 5th and 14th Amendment, ruling on the Criminal Intent and conduct of Petitioner-Respondent violated that right. Said court denied Petitioner-Respondent his rights under the 5th and 14th Amendment.

The appeal in this cause is based on the contention that the evidence and mitigation provided by Petitioner-Respondent with respect to two diametrically opposed decisions in two successive proceedings in 1959 is oppressive and unjust and that reliance on the 2nd finding of fact alone denied him his rights under the applicable provisions of the Code of the United States Constitution and Illinois State Constitution.

That the Writ of Certiorari should issue on the double jeopardy question raised herein as well as the contentions that the 2nd prosecutions was res-adjudicata of the 1st in the State and that the 2nd prosecution should have been estopped as reported in the citations herein set out.

It is a matter of utmost importance that this Supreme Court of the United States vindicate Petitioner's rights granted under the 5th Amendment of the U.S. Constitu-

tion and as stated in the 14th Amendment of Illinois Constitution as to proceedings of all lawyers involved in disbarment proceedings.

CONCLUSION

For these reasons the Appeal should be granted herein and the Writ of Certiorari should issue to review the Judgment and Opinion of the Supreme Court of Illinois.

Respectfully submitted,

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August 30, 1973.